

THE
LORDS
PROTEST.

Sach. 214/1

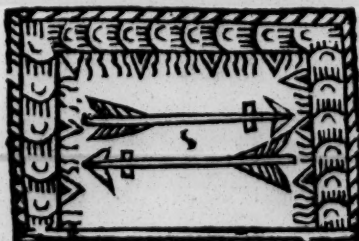
THE

FOR

PROTEST



THE
NAMES
Of the RIGHT HONOURABLE
PEERS,
Who protested against Some
PROCEEDINGS
In the CASE of
Dr. *HENRY SACHEVERELL.*
Together with Their LORDSHIPS
REASONS
For such Their
PROTESTATION.



Printed in the Year 1710.

THE
NAMES

OF THE

PROCEEDINGS

OF THE

ASSOCIATION

FOR THE

RESEARCH

IN

THE

Die Martis, 14^o Martij, 1709.

The QUESTION was put,

That by the Law and Usage of Parliament, in Prosecutions, by Impeachments, for High Crimes and Misdemeanours, by Writing or Speaking, the Particular Words, supposed to be Criminal, are not necessary to be expressly specified in such Impeachments?

It was resolved in the Affirmative.

DISSENTIENT,



BECAUSE We conceive, the Law of the Land is as much the Rule of Judicature in Parliament, as it is in the Inferiour Courts of Justice; and since, by the Opinion of all the Judges, in all Prosecutions by Information or Indictment, for Writing or Speaking, the particular Words, suppos'd to be Criminal, must be expressly specified in such Information or Indictment; and that this is the Law of the Land, confirm'd by constant Practice; We conceive, that there is the same Reason and Justice for specifying, in Impeachments, the particular Words supposed to be Criminal; for, otherwise, a Person who is Innocent and Safe by the Law out of Parliament, may, nevertheless, be condemn'd in Parliament.

I.
Buckingham,
Jo. Ebor.
H. London,
Hamilton,
Berkely of Strat-
ton.
Northesk,
Dartmouth,
Tho. Roffen.
Geo. Bath and
Wells,
Mar,
Haverham.

For, We conceive, that some Reasons of Law and Justice, why the Words supposed Criminal must be specified in Informations and Indictments, may be, that the Party accused may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witnesses to the Matter of such Charge; and that the Judges themselves may the better judge of the Nature of the Crime, and of a Punishment adequate to it; which, in Cases of Misdemeanour, which are indefinite and innumerable, must extremely vary, according to the Heinousness of the Offence: And, finally, that the House of Lords, upon Complaint to them, may also judge, whether the Fine, which is usually one of the Punishments for Misdemeanours, does not exceed the Demerit; especially, since by the Bill of Rights, Exorbitant Fines are declared to be Illegal: Which Reasons seem to be fully as strong in the Case of Impeachments, as in Indictments and Informations; for, the particular Words are as necessary to enable the Lords to determine uprightly and impartially, as the Jury or Judges; and as necessary for the Defence of the Accused here, as in the Courts below; and, if there was to be a Difference, it seems more necessary in this High Court; for, the Weightier the Prosecution is, the more Need has an unfortunate Man of Indulgence, and all lawful Favour: And, surely, there cannot be a heavier Load upon any Man, than an Accusation of all the Commons of Great Britain.

We do not remember any Precedent insisted on for the Maintenance of this Resolution, save only the Case of Dr. Manwaring, which, We conceive, could not warrant this Resolution. For, 1. The Words charg'd upon him, by the Commons Declaration, were not compar'd with the

II.

Sermons, tho' it was desired; and, consequently, no Lord could say, they were not the Words of the Sermon: And, therefore, upon such Uncertainty, We conceive, We could not ground a positive Resolution. 2. The Charge upon him, taken out of his Sermon on the 4th of May, 1628, seems to be the very Words by him spoke; for they were attested by Ear Witnesses, who, surely, never were or could be admitted to attest their own Conjectures of the Scope of a Sermon, and not specify the very Words; for that would be, to make the Witnesses to be the Judges. 3. Besides, in such a Case as this, where the Party did not insist on any legal and just Exceptions, of which he might have taken Advantage, if he had made his Defence; which he did not, but submitted, and begg'd Pardon; This ought not to be look'd upon as a Precedent, or Authority, to justify the Illegality of the Form of that Impeachment.

III. But altho' this Precedent was full and express to the Point resolv'd, We humbly conceive, that one Precedent is not sufficient to support a Law and Custom of Parliament; nor, consequently, a Resolution declaring it; for, surely, there is a great Difference between a single Instance, and a Law and Custom: Especially,

IV. Since We conceive, that in all Precedents, at least, all that have appear'd to us for Four hundred Years, of the Prosecutions in Parliament, the particular Words charg'd, as Criminal, have been constantly express'd in the Articles or Declarations of Impeachment.

Ed. II. *Exilium Hugonis le Despencer Patris & Filij*: The first Article was for making a Bill in Writing; the Tenour whereof was particularly set forth.

26 H. VIII. *William de la Pool*, Sixth Article was for Words spoken by him, sitting in Council in the *Star-Chamber*, viz. that he said, *He had a Place in the Council-House of the French King as he had here, and was as well trusted as he was here; and could remove from the French King the Privyest Man of his Council, if he would.*

1640. Lord Finch.

Art. 4. The Opinions he deliver'd, are set forth in *hac verba*.

5. As also the Times when he deliver'd them.

7. Another Opinion deliver'd by him, in the *Exchequer-Chamber* and *Western-Circuit*, is set down in his express Words.

1640. Dr. Cozens.

Art. 11. He is charg'd with Words, deliver'd in a Sermon at *Durham*.

The Words were these; *The Reformers, &c.*

19. Charges him with Words, in like manner: The Words were these; *The King, &c.*

1641. Berkely.

Art. 1. The Words charg'd upon, are expressly mention'd.

4. That he subscrib'd an Opinion in *hac verba*.

5. Which are specified.

6. The Matter therein charg'd, tho' of Record, was copied, and deliver'd with the Articles.

7, 8. The Words spoken, and the Place, expressly set forth.

1641. Judge Crawley.

Art. 1, 2, 3. For subscribing, and giving Opinions, set forth in *hac verba*.

1641. Herbert.

For exhibiting Articles against the Five Members; which Articles follow in these Words, viz.

1641. *Thirteen Bishops impeach'd for making and promulging, in 1640, several Constitutions and Canons, contrary to the King's Prerogative, &c.*

They demurr'd, because the Charge was General; but receded from this Demur, because it appear'd to be Particular.

E. Strafford.

E. Strafford.

Expresses the Words spoken by him, and the Time.

Expresses the Words spoken by him.

Is, in like manner, with an Innuendo of his Meaning.

1641.

Art. 2.

4, 20, 21, 22,

23, 24, 25, 27.

26.

Archbishop Laud.

Expresses the Words spoken by him.

Expresses the Words spoken by him, and the Time, and Place. So necessary did the Long Parliament itself think it, to pursue the Forms of Law in all their Prosecutions.

1642.

Art. 1, 4, 10.

2.

Upon the whole, therefore, we conceive, that so great a Number of Precedents is sufficient to outweigh the single Instance of *Dr. Manwaring's* Case, how apposite soever it may seem to be to the present Case; which, for the Reasons we have mention'd, is so far from being Plain and Clear, or having the full Authority of a Precedent: And the Law and Custom of Parliament, as we conceive, is to be determin'd by Constant Course and Practice, and not one Precedent occasion'd by such odious Doctrines as those of *Dr. Manwaring*. Nor can the contrary Assertion, to the above-said Resolution, be of any ill Consequence to Impeachments by the Commons, because it is easie for them to specify the Words which offend them, but extremely difficult for the Accus'd to defend himself, without knowing them. And as all, who are charg'd Criminally, have leave to make their Defence, so they should also have allow'd to them all lawful Means for it.

Jo. Ebor.

Scarsdale,

Anglesey,

Abingdon,

Weymouth,

Conway,

Willughby, Br.

Guilford,

H. London,

Leeds,

Suffex,

Nottingham,

N. Duresme,

Rochester,

Scarborough,

W. Cestriens.

Osborne,

Guernsey,

Lempster,

Thanet,

Denbigh,

Plymouth,

Northampton,

North and Grey,

Craven,

R. Ferrers,

Beaufort,

Tarmouth,

Berkshire,

Jersey,

Stawell,

Howard.

Die Jovis, 16^o Martij, 1709.

THE Order of the 14th instant being read, for taking into Consideration the Impeachment of *Dr. Henry Sacheverell*, Article by Article:

And it being mov'd, to declare, *That the Commons had made good the First Article against Dr. Henry Sacheverell;*

After a long Debate thereupon,

This Question was proposed,

That the Commons have made good Their First Article of Impeachment against Henry Sacheverell, Doctor in Divinity?

And

And a farther Debate thereupon,

This Question was put,

Whether this Question shall be now put ?

It was Resolv'd in the Affirmative.

DISSENTIENT,

Because We humbly conceive, there are no Reflections therein contain'd on the Memory of the late King *William*, nor the *Revolution*: And that there is no Offence charg'd therein upon Dr. *Sacheverell*, against any known Law of the Land.

<i>Jo. Ebor.</i>	<i>Ormonde,</i>	<i>Hamilton,</i>
<i>Weymis,</i>	<i>Anglesey,</i>	<i>Berkshire,</i>
<i>Suffolk,</i>	<i>Rochester,</i>	<i>Thanet,</i>
<i>Shrewsbury,</i>	<i>Buckingham,</i>	<i>Scarborough,</i>
<i>Poulet,</i>	<i>Craven,</i>	<i>Nottingham,</i>
<i>Beaufort,</i>	<i>Weymouth,</i>	<i>North and Grey,</i>
<i>Denbigh,</i>	<i>Sussex,</i>	<i>Conway,</i>
<i>Stawell,</i>	<i>Lexington,</i>	<i>Lempster,</i>
<i>Tarmouth,</i>	<i>Osborne,</i>	<i>Abingdon,</i>
<i>R. Ferrers,</i>	<i>Northesk,</i>	<i>Geo. Bath and</i>
<i>N. Duresme,</i>	<i>Tho. Roffen.</i>	<i>Wells,</i>
<i>Scarsdale,</i>	<i>Northampton,</i>	<i>Plymouth,</i>
<i>Howard,</i>	<i>Mar,</i>	<i>Guilford,</i>
<i>Berkely, Str.</i>	<i>Leigh,</i>	<i>H. London,</i>
<i>Say and Sele,</i>	<i>Weston,</i>	<i>Dartmouth,</i>
<i>W. Cestriens.</i>	<i>Chandos,</i>	<i>Haversham,</i>
<i>Willughby, Br.</i>	<i>Guernsey,</i>	<i>Leeds.</i>

Then the main Question being put,

That the Commons have made good Their First Article of Impeachment against Henry Sacheverell, Doctor in Divinity?

It was resolved in the Affirmative.

DISSENTIENT,

Buckingham,
Shrewsbury,
Dartmouth,
Guilford,
N. Duresme,
Willughby, Br.
Haversham,
Northesk,
Mar.

Because, by the Laws of the Land, the Laws of Parliaments, and the Inherent Right of Peerage, every Peer is to judge for Himself, both of the Fact, as well as of the Law, and can't be precluded by any Majority; which, indeed, must determine the Case in respect of the Criminal; but never did, nor can, preclude any Lord from Voting the Party Accus'd, Guilty or Not Guilty of the Fact, as well as the Crime of such a Fact.

Sussex,

Sussex,	Thanet,	Leeds,
Northampton,	Denbigh,	Beaufort,
Tarmouth,	Weymouth,	Scarsdale,
Scarborough,	Stawell,	Rochester,
W. Cestriens.	Conway,	Jersey,
North and Grey,	Howard,	R. Ferrers,
	Geo. Bath and	Plymouth,
	Wells,	Leigh,
	Guernsey,	Abingdon,
	Craven,	Asbburnham.

To the Questions upon the Second, Third, and Fourth Articles, We dissent, for the same Reason as is given against the Question upon the First.

Buckingham,	Hamilton,	Beaufort,
Berkshire,	Sussex,	Denbigh,
Nottingham,	Scarsdale,	Tarmouth,
Rochester,	Stawell,	Jersey,
Weymouth,	Poulet,	Thanet,
Howard,	Abingdon,	Plymouth,
H. London,	Conway,	Northampton,
Ormonde,	Weston,	Anglesey,
Willughby, Br.	Guilford,	Craven,
Guernsey,	Lexington,	Dartmouth,
Jo. Ebor.	W. Cestriens.	Tho. Roffen.
N. Duresme,	Geo. Bath and	
	Wells,	

Die Sabbati, 18^o Martij, 1709.

IT is Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the Question to be put to each Lord in *Westminster-Hall*, shall be,

Is Henry Sacheverell, Doctor in Divinity, Guilty of High Crimes and Misdemeanors, charg'd on Him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or Not Guilty, only.

DISSENTIENT,

Because We do humbly conceive, that the obliging every Lord to answer generally, Guilty, or Not Guilty, to a Question containing all the Articles of this Impeachment, is a Kind of Tacking upon ourselves, by an unnecessary Joining the Matters of a different Nature, and Subjecting them to one and the same Determination; and, consequently, may prejudice the Right every Peer has to give a free Affirmative or Negative; since, whoever thinks Dr. *Sacheverell* Guilty of One Part, and Innocent of the Other, will be obliged either to Approve what he Condemns, or Condemn what he Approves.

C

Buckingham,
Hamilton,
Mar,
Lexington,
Dartmouth,
Northesk,
Jo. Ebor.
W. Cestriens.
Tho. Roffen.
N. Duresme,
We *Shrewsbury.*

- II. We do humbly conceive, there is, at least, a Possibility, that tho' a Majority of the House, if admitted to Vote to the Articles separately, may think him Innocent upon each Article; yet, by this Method of a general Answer, he may be Condemn'd of all: Which seems not be consistent with the usual Method of Justice in this House.
- III. We humbly conceive, that since the Judgment of the House, in this Case, ought to be a Declaration of the Law; the Condition of the People will be most miserable, to have Punishment inflicted for High Crimes and Misdemeanours, and not to have a Possibility of informing themselves, what the High Crimes and Misdemeanours, thereby punish'd, are: For, the People's only Guide is the Law; and they can never be guided by what they can never be inform'd of. And We do humbly conceive, that this Uncertainty being in the Case of a Clergyman for Preaching, it may, possibly, create some Fear in good Men, when they Preach some Doctrines of the Church of England; particularly, that of *Non-Resistance*; and may be made use of by ill Ones, as an Excuse for the Neglect of that Duty, which, upon some Occasions, is required of them, even by Laws of the Land.

Ormonde,	Beaufort,	Berkshire,
Scarsdale,	Anglesey,	Thanet,
Denbigh,	Northampton,	Tarmouth,
Leeds,	Lempster,	Rochester,
Nottingham,	H. London,	Sussex,
Stawell,	R. Ferrers,	North and Grey,
Weymouth,	Poulet,	Abingdon,
Craven,	Howard,	Jersey,
Osborne,	Plymouth,	Conway,
Willughby, Br.	Guilford,	Weston,
Haversham,	Leigh,	Guernsey.
	Geo. Bath and	
	Wells,	

Die Luna, 20^o Martij, 1709.

THE House, pursuant to the Order of *Saturday* last, Adjourn'd into *Westminster-Hall*.

And, being there, the House was resum'd: And the Lord-Chancellor declar'd, That the Lords had agreed upon a Question to be put to each Lord, generally.

Then his Lordship put the Question, beginning at the *Junior* Baron first, as follows:

Is Dr. Henry Sacheverell Guilty of High Crimes and Misdemeanours, charg'd upon him by the Impeachment of the House of Commons?

And having asked every Lord present, and they having declared Guilty, or Not Guilty, his Lordship having cast up the Votes, declared him Guilty.

DISSENTIENT,

<i>Suffex,</i>	<i>Leeds,</i>	<i>Buckingham,</i>
<i>Thanet,</i>	<i>Tarmouth,</i>	<i>Rochester,</i>
<i>Nottingham,</i>	<i>Jo. Ebor.</i>	<i>Mar,</i>
<i>Craven,</i>	<i>Lempster,</i>	<i>Weymouth,</i>
<i>Northesk,</i>	<i>Northampton,</i>	<i>Guilford,</i>
<i>North and Grey,</i>	<i>Willughby, Br.</i>	<i>Conway,</i>
<i>Leigh,</i>	<i>Abingdon,</i>	<i>Anglesey,</i>
<i>Jersey,</i>	<i>Poulet,</i>	<i>Scarsdale,</i>
<i>Hamilton,</i>	<i>H. London,</i>	<i>Dartmouth,</i>
<i>Beaufort,</i>	<i>Guernsey,</i>	<i>Denbigh,</i>
<i>Weston,</i>	<i>Geo. Bath and</i>	<i>Howard,</i>
<i>Ormonde,</i>	<i>Wells,</i>	<i>Tho. Roffen.</i>
<i>Berkshire,</i>	<i>Say and Sele,</i>	<i>Berkely, Str.</i>
<i>N. Duresme,</i>	<i>Osborne,</i>	<i>Stawell,</i>
<i>Shrewsbury,</i>	<i>Plymouth,</i>	<i>Lexington,</i>
<i>Scarborough,</i>	<i>Chandos,</i>	
	<i>W. Cestriens.</i>	

Die Martis, 21^o Martij, 1709.

THen the House (pursuant to the Order Yesterday) took into Consideration what Censure to give upon *Henry Sacheverell*, Doctor in Divinity.

And it being propos'd as follows:

First, That Dr. *Henry Sacheverell* be enjoin'd not to Preach during the Term of Seven Years.

Secondly, That for the same Term of Years, he be made incapable of receiving any other Ecclesiastical Benefice, than what he now enjoys.

Thirdly, That he be imprison'd in the *Tower*, for Three Months, and until he find Sureties for his good Behaviour during the Term of Seven Years, before the Two Chief Justices.

Fourthly, That his Sermons be burnt by the Hangman, at the *Exchange*, in the Presence of the Lord-Mayor, and Sheriffs.

Then the House took the propos'd Question into Consideration, Paragraph by Paragraph; and, after Debate upon the first Paragraph,

It was agreed to leave out the Word (Seven); and it being propos'd, instead thereof, to insert the Word (Three);

The Question was put,

Whether the Blank in the first Paragraph shall be fill'd up with the Word (Three)?

It was Resolv'd in the Affirmative.

Then the Question was put,

That Dr. *Henry Sacheverell* shall be enjoin'd not to Preach during the Term of Three Years?

It was Resolv'd in the Affirmative.

Then the second Paragraph propos'd, was,

That Dr. *Henry Sacheverell* be made incapable of receiving any Ecclesiastical Benefice, for the Space of Three Years.

And

And after Debate thereupon,
 This Question was put,
 That Dr. *Henry Sacheverell* be made incapable of receiving any farther Ecclesiastical Benefice, during the said Term of Three Years?
 It was Resolv'd in the Negative.

Then the third Paragraph propos'd, was,

That Dr. *Henry Sacheverell* shall be imprison'd in the *Tower* for three Months, and until he find Sureties for his good Behaviour.
 This was not insisted on.

Then the fourth Paragraph propos'd, was,

That Dr. *Henry Sacheverell's* Two Sermons be burnt by the Hangman at the *Exchange*, in the Presence of the Lord Mayor, and Sheriffs.

And after farther Debate, this Question was put,

That the Two printed Sermons of Dr. *Henry Sacheverell*, referr'd to by the Impeachment of the House of Commons, shall be burnt before the *Royal-Exchange*, by the Hands of the Common Hangman, in the Presence of the Lord Mayor of *London*, and the Two Sheriffs of *London* and *Middlesex*?

It was Resolv'd in the Affirmative.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Judgment to be pass'd in the Case of Dr. *Henry Sacheverell*, shall be,

That *Henry Sacheverell*, Doctor in Divinity, shall be, and is hereby enjoined not to Preach during the Term of Three Years next Ensuing:

That Dr. *Henry Sacheverell's* Two printed Sermons, referr'd to by the Impeachment of the House of Commons, shall be burnt before the *Royal-Exchange* in *London*, between the Hours of Twelve and One, on *Monday* the 27th day of this Instant *March*, by the Hands of the Common Hangman, in the Presence of the Lord Mayor of the City of *London*, and the Two Sheriffs of *London* and *Middlesex*.

DISSENTIENT,

Jo. Ebor.
Scarsdale,
Northampton,
Craven,
Howard,
North and Grey,
Scarborough,
N. Duresme,
Weymouth,
Geo. Bath and Wells,
Guilford,

Buckingham,
Berkshire,
Abingdon,
Conway,
Plymouth,
H. London,
Tarmouth,
Tho. Roffen.
Guernsey,
Lempster,
Albburnham,

Denbigh,
Nottingham,
Thanet,
Osborne,
Beaufort,
Anglesey,
Sussex,
R. Ferrers,
Leigh,
Poulet.

F I N I S.

